

OGC 73-1107

19 June 1973

STAT

MEMORANDUM FOR:

SUBJECT : Destruction of Agency Records

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REFERENCE : OGC Opinion, 73-1033, Subj: Authority for  
Destruction of Records, dtd 7 Jun

1. The purpose of this paper is to review the statutory enactments regarding Federal records management and destruction particularly with respect to the authorities of the Agency in order to document in detail the legal basis for the referent opinion.

2. In 1943 the Congress enacted legislation (57 Stat. 380) "...to provide for the disposal of certain records of the United States Government". The act (Section 1) defined records in very broad terms and established the National Archives Council (NAC), which was to promulgate regulations for compiling and submitting to the U.S. Archivist lists and schedules of records proposed for disposal. In addition, the NAC was to establish procedures for the disposal of records that had been authorized to be disposed of. "Such regulations, when approved by the President were to be binding on all agencies of the United States Government." The act specified that when an agency had determined that it had records with no administrative, legal, research or other value, it would provide a list of such records to the Archivist. In turn, the Archivist, upon agreeing with the agency, and pursuant to the regulations established by NAC, would submit the list to the Congress for approval to dispose of the records. Section 9 of the act required special treatment of financial

records. It stated that:

Records pertaining to claims or demands by the Government of the United States or against it, or to any accounts in which the Government of the United States is concerned, either as a debtor or creditor, shall not be disposed of by the head of any agency...until such claims, demands, and accounts have been settled and adjusted in the General Accounting Office, except on the written approval of the Comptroller General of the United States.

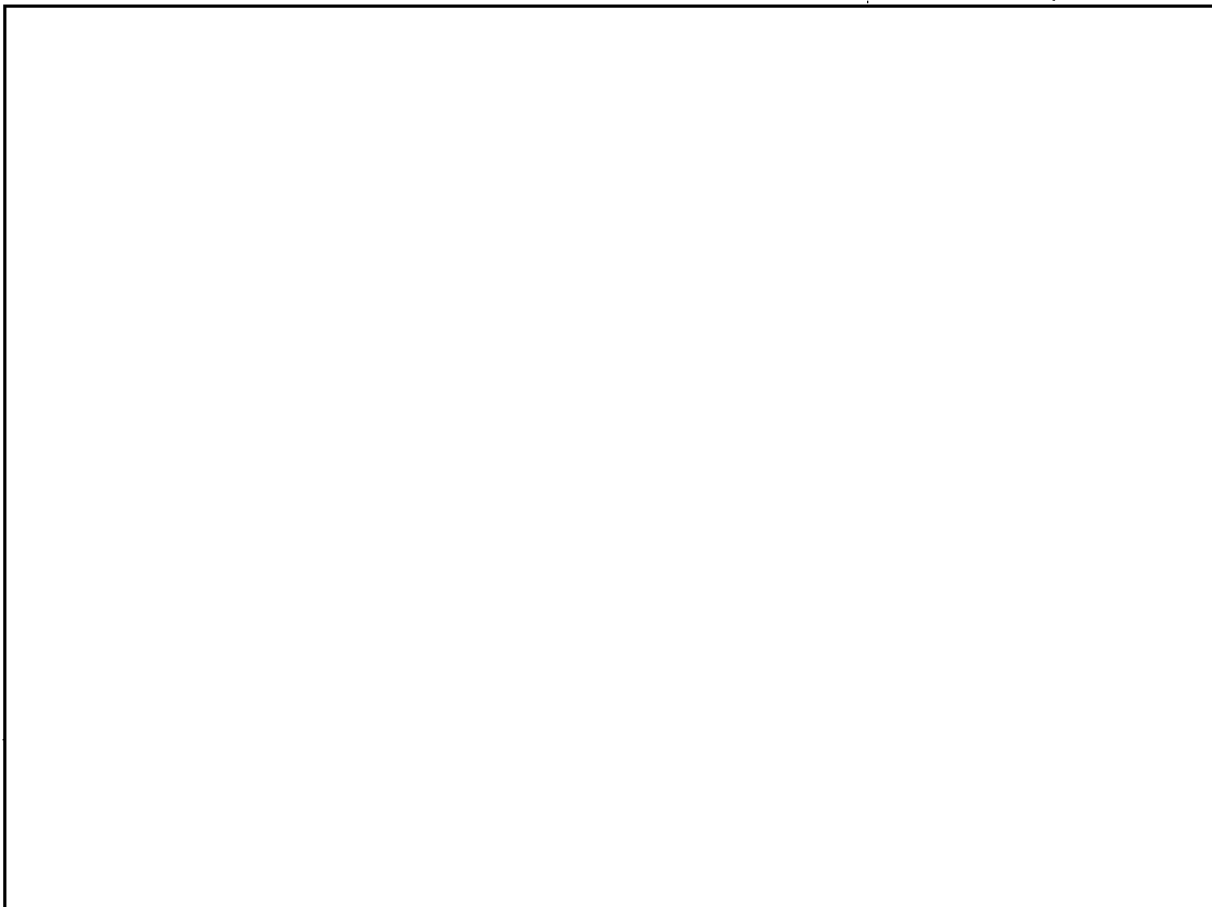
The act was codified as part of the provisions of Title 44 of the U.S. Code (1964 edition). Accordingly, all U.S. agencies were required to follow this procedure unless given an exemption after 7 July 1943.

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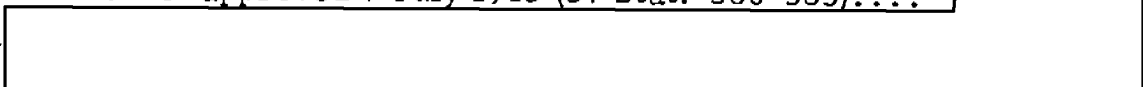
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6. In 1950, the Federal Property and Administrative Services Act of 1949 was amended (P. L. 81-754). Among other things, the amendment included a provision entitled The Federal Records Act of 1950 (Section 6(d)), which detailed the provisions for records management and supplemented the provisions of the 1943 Act. Section 506(e)(1) of the Federal Records Act of 1950 states "...that no records in the custody of the agency are to be alienated or destroyed except in accordance with the provisions of the Act approved 7 July 1943 (57 Stat. 380-383)...."

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7. In the Supplemental Appropriations Act, 1955 (P. L. 83-663) the Congress, in Chapter VIII in the provision entitled "Survey of Government Records, Records Management, and Disposal Practices", stated:

That notwithstanding any other provisions of said Act /the Federal Property and Administrative Services Act of 1949/, the Administrator shall have final authority in all matters involving the conduct of surveys /of Government records, and records creation, maintenance, management and disposal practices in Federal agencies/ and the implementation of recommendations based on such surveys....

Thus, notwithstanding the provision in the Federal Property and Administrative Services Act of 1949 which prevented the impairment of the Agency's authorities, this provision for making surveys of records management practices and implementing the recommendations therefrom, because of its subsequent enactment to the 1949 and 1950 legislation, gives the Administrator of GSA the final authority in this field. There is no exception for Agency related matters.

8. In 1968 the major provisions of the 1943 Act, the records management portions of the 1949 Act (Section 104) and the 1950 Amendment (Section 6(d)) and the first proviso in the paragraph quoted above from the Supplemental Appropriations Act, 1955, were repealed (P.L. 90-620) upon codifying the general and permanent laws relating to public printing and documents (Title 44 of the U.S. Code). However, the legislative history of that codification (Senate Report No. 1621 dated 9 October 1968) states that "...the purpose of this bill /the codification/ is to restate in comprehensive form, without substantive change, the statutes in effect on January 14, 1968, relating to public printing and documents.... (emphasis added)". The 1955 provision was codified in 44 U.S.C. 396a (1964 Edition) and subsequently recodified in 44 U.S.C.A. 2910. Thus, while there may have been authority for exempting the Agency records management and disposal practices from the authority of the Administrator of GSA during the period of 1949-1954, currently, there being no basis for an exception, it is my opinion that the Agency is bound to comply with the Administrator in all matters involving records creation, maintenance and disposal.



Office of General Counsel

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